

# Amendments to the Federal Rules of Civil Procedure Relating to Discovery

**\*\* Effective December 1, 2000 \*\***

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## Initial Disclosures

- C The scope of the disclosure obligation is narrowed to cover the identification of **witnesses and documents that the disclosing party may use to support its *claims or defenses* or to rebut the claims and defenses** of another party. “Use” by a party of a document or witness means use at a pretrial conference, in discovery (e.g., during a deposition), to support a motion, at trial, or if the need arises. 26(a)(1)(A), (B).
- C The disclosure obligation **does not extend to documents or witnesses**, whether favorable or unfavorable, **that a party does not intend to use**.
- C The disclosure obligation also does not extend to impeachment information. 26(a)(1)(A), (B).
- C A party has a **duty to supplement** its disclosures and is subject to sanctions if it fails to do so without substantial justification. 26(e)(1), 37(c)(1).
- C District courts may no longer “opt out” or otherwise alter these disclosure requirements either by local rule or by standing order. However, if a party contends that disclosure is not appropriate under the circumstances, it may present its objections to the court, which may enter a case-specific order. 26(a)(1).
- C **These disclosures must be made *no later than 14 days after the 26(f) conference, and disclosure before the conference is encouraged***. There are only two exceptions to this rule: (a) where the court orders otherwise; and (b) where a party objects to disclosure and states its objections in the Case Management Plan. 26(a)(1).
- C The disclosure requirements also do not apply in the following cases: (a) actions for review on an administrative record; (b) habeas corpus petitions; (c) pro se prisoner petitions; (d) actions to enforce or quash an administrative summons or subpoena; (e) actions by the United States to recover benefit payments; (f) actions by the United States to collect on a federally guaranteed student loan; (g) ancillary proceedings; and (h) actions to enforce arbitration awards. 26(a)(1)(E).
- C These disclosures are not to be filed with the court unless and until they are used in the proceeding. Rule 5(d).
- C All disclosures must be made in writing, signed, and served. 26(a)(4).

## Pretrial Disclosures

- C At least 30 days prior to trial, each party must disclose to the other parties and file with the court a list of all witnesses that the party may call, a list of all witnesses whose testimony will be presented by deposition or transcript, and a list of all documents that the party may offer. 26(a)(3).
- C This disclosure obligation does not extend to impeachment information. 26(a)(3).
- C Any objections to the use or admissibility of a party’s pretrial disclosures must be served and filed with the court within 14 days. Any objections not made within this time period, other than objections under Federal Rules of Evidence 402 and 403, are waived unless excused by the court for good cause. 26(a)(3).
- C All disclosures and objections thereto must be made in writing, signed, and served. 26(a)(4).

## Scope of Discovery

- Ⓒ **Discovery is now limited to any matter, not privileged, that is relevant to a party's claims or defenses.** As a general rule, therefore, the parties are not entitled to discovery to develop claims or defenses that are not already identified in the pleadings. 26(b)(1).
- Ⓒ **The court may order discovery of any matter relevant to the *subject matter* of the action only for good cause.** 26(b)(1).
- Ⓒ **The parties are bound by the limits on the numbers of interrogatories** (25, including subparts) **and the number** (10) **and length of depositions** (seven hours per deponent; see below) **as set forth in Federal Rules of Civil Procedure 30, 31, and 33.** District courts may no longer “opt out” of these limits either by local rule or by standing order, but they may set different limits on a case-by-case basis. Alternatively, the parties may stipulate to different limits in a particular case. 26(b)(2).
- Ⓒ The court may also limit, by order or by local rule, the number of requests for admission made pursuant to Federal Rule of Civil Procedure 36. 26(b)(2).
- Ⓒ A party has a **duty to supplement** its discovery responses and is subject to sanctions if it fails to do so without substantial justification. 26(e)(2), 37(c)(1).

## Timing of Discovery

- Ⓒ As a general rule, the parties may not seek discovery from any source until they hold their Rule 26(f) conference. Three exceptions apply: (a) in those cases exempted by 26(a)(1)(E); (b) where ordered by the court on a case-by-case basis; or (c) where the parties agree to disregard this moratorium. 26(d).
- Ⓒ **Except for those cases exempted by 26(a)(1)(E), the parties must conduct their 26(f) meeting at least 21 days prior to the Rule 16 conference. The parties' Case Management Plan must be submitted to the court no later than 14 days thereafter in order to ensure that the court will have the plan well in advance of the Rule 16 conference.** 26(f).

## Depositions

- Ⓒ **Depositions are now subject to a presumptive durational limit of one seven-hour day per deponent.** For these purposes, each person deposed pursuant to Rule 30(b)(6) is considered a separate deponent. This time limit may only be extended in one of two ways: (a) by stipulation of the parties; or (b) by order of the court for good cause. Rule 30(d)(2).
- Ⓒ Examples of good cause that may warrant an extension of this durational limit include: (a) when a witness needs an interpreter; (b) when the subject events occurred over a long period of time; (c) when the witness will be questioned about numerous or lengthy documents but does not take the opportunity to review them in advance; (d) when documents were requested but not produced prior to the deposition; (e) in multi-party cases; (f) when the witness' lawyer wants to question the witness; (g) when the witness is an expert witness; and (h) other circumstances that are beyond the parties' control, such as a power outage or a health emergency.